

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 2

February 18, 2005

**SUBJECT: GANG ENHANCEMENT PROCEDURES AND GANG HISTORY BOOKS - ESTABLISHED**

**PURPOSE:** The Street Terrorism Enforcement and Prevention (STEP) Act, and California Penal Code (PC) Sections 186.22(a) and 186.22(b), were enacted in 1988 to provide for the enhanced punishment of any individual who actively participates in a gang, has knowledge that the gang engages in a pattern of criminal activity, and willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang.

Due to changes in legislation, the STEP Act has undergone several revisions. This Order incorporates those revisions and establishes the procedures for the preparation and filing of gang enhancements, gang expert court testimony and the preparation and maintenance of Area gang history books. This Order supercedes Administrative Order No. 7, 1989, *Procedures for Profiling and Targeting Criminal Street Gangs - Revised*.

**PROCEDURE:**

- I. APPLICABLE GANG ENFORCEMENT STATUTES.** The following Penal Code sections are applicable when seeking gang enhancements in felony cases. The gang enhancements in the PC Sections can add two, three, or four years to any felony, five years to any serious felony and 10 years to any violent felony.
  - A. Penal Code Section 186.22(b)(1).** This Section may be used as an enhancement for any gang-related felony. All that is required is that the felony be committed for the benefit of, at the direction of, or in association with a criminal street gang and that the defendant specifically intends to promote, further, or assist in any criminal conduct by gang members. This should be the first option for gang enhancements in felony cases.
  - B. Penal Code Section 186.22(b)(4).** This Section enhances certain felonies, making them life sentence crimes. Application of this Section can result in a sentence of seven years to life for gang extortion and witness intimidation. It can also result in a sentence of 15 years to life for a gang home invasion robbery, carjacking, shooting at an occupied vehicle

or building, and discharging a firearm from a vehicle resulting in great bodily injury or death. Again, it is required that the felony be committed for the benefit of, at the direction of, or in association with a criminal street gang and that the defendant specifically intends to promote, further, or assist in any criminal conduct by gang members.

- C. Penal Code Section 186.22(d).** This Section makes a misdemeanor committed for the benefit of a gang, such as vandalism/tagging, a "wobbler" or prosecutable as either a felony or a misdemeanor. It also enhances the sentences on misdemeanors requiring a mandatory minimum sentence of 180 days. It tracks, word-for-word, the language of 186.22(b)(1) PC gang enhancement. It is an effective tool to increase punishment on traditional misdemeanor cases, such as when a gang member spray paints graffiti, but the damage is less than \$400.00, or where a gang fight results in a battery.
- D. Penal Code Section 186.30.** This Section requires persons convicted of gang-related crimes, who are ordered by the court, to register with the Chief of Police or Sheriff in their jurisdictions of residence. Registration must be completed within 10 days of release from custody or within 10 days of changing residence. The registration is mandatory for a period of five years from the date of conviction. Penal Code Section 186.33 provides that failure to register in compliance with 186.30 PC is a misdemeanor. This Section should always be filed when gang enhancements are sought. However, it could also be applied if the court finds that the crime is gang-related at the time of sentencing or disposition.
- II. FILING GANG ENHANCEMENTS.** The two main components of a successful gang enhancement allegation are the quality of the gang expert and his/her testimony, and predicate crimes committed by persons who are current or former members of the gang and exhibit a pattern of criminal activity as delineated in PC Section 186.22(e).
- A. Gang Expert Defined.** A Gang expert **must** possess personal knowledge of the gang itself and its criminal activities. This can be enhanced by

reviewing all available documentation. The expert should have personal knowledge of the gang member or, at a minimum, be able to testify that the individual is a documented gang member. The expert will ultimately have to give the opinion that this particular crime was committed for the benefit of the gang with the specific intent to further criminal gang activity and/or to increase the gang's reputation or influence.

**1. Gang Expert Qualifications.** Qualifying criteria for a gang expert should include, but is not limited to:

- \* Works or has worked a specialized gang detail;
- \* Has routine contact/conversations with members of a gang;
- \* Has investigated or assisted in investigations of crimes committed by members of a gang;
- \* Discusses the gang with other members of his/her agency;
- \* Has received specialized training on the subject of gangs;
- \* Has personal experience or background in dealing with gangs and gang members; and,
- \* Has read books and articles on gang activity.

**Note:** It is recommended that a gang expert have a constantly updated resumé for court and instructional purposes. The information on the gang expert (name, serial number, location of work) has to be available at the time the case is filed.

**2. Testimony Provided by a Gang Expert.** An officer called to testify as a gang expert should be prepared to explain:

- \* Previous testimony and evidence;
- \* How gangs operate;
- \* Specific information about the gang involved, (ethnic makeup, size, signs, symbols, area, history, criminal activity, associates, rivals);
- \* Levels of gang involvement, rivalry, and revenge;
- \* How and why people join and quit gangs;

- \* The significance of graffiti and crossing it out;
- \* The meaning of tattoos and monikers;
- \* Criteria for documenting a person as a gang member;
- \* The difference between an active member and an affiliate;
- \* What constitutes a gang;
- \* Witness intimidation and the lack of cooperation with authorities;
- \* How the gang increases its power and reputation;
- \* The importance of respect in gang culture; and,
- \* Who would qualify as an ex-gang member.

**B. Patterns of Criminal Gang Activity.** The prosecution must prove a "pattern of criminal gang activity," as defined in Section 186.22(e) PC, by determining that prior crimes have been committed. These prior crimes must have been committed by any person who was then, or is now, a member of the defendant's gang. The filing officer must obtain copies of the prior crime and/or arrest reports, and certified records of conviction from the court clerk linking this gang to the commission or attempted commission, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following crimes, and the offenses were committed on separate occasions, or by two or more persons:

- \* Assault with a deadly weapon;
- \* Robbery;
- \* Murder or Manslaughter;
- \* Sale, possession for sale, transportation, manufacture, offer for sale or offer to manufacture any controlled substance;
- \* Shooting at an occupied vehicle or inhabited building;
- \* Discharging or permitting discharge of a firearm from a motor vehicle;
- \* Arson;
- \* Witness intimidation;
- \* Grand theft;
- \* Grand theft of any firearm, vehicle trailer or vessel;
- \* Burglary;

- \* Rape;
- \* Looting;
- \* Money laundering;
- \* Kidnapping;
- \* Mayhem;
- \* Aggravated mayhem;
- \* Torture;
- \* Felony extortion;
- \* Felony vandalism;
- \* Carjacking;
- \* The sale, delivery or transfer of a firearm;
- \* Possession of a concealable firearm by a juvenile;
- \* Criminal threats; or,
- \* Theft and unlawful taking/driving of a vehicle.

The last predicate crime committed must have occurred within three years of the current crime. The current crime must be gang-related. The prior crimes must have been committed by any person who was then, or is now, a member of the defendant's gang.

**Note:** The prior crimes history must be available at the time the case is filed.

To successfully obtain prosecution, it must be shown that the current crime was committed for the benefit of, at the direction of, or in association with the gang. This can be accomplished by admitting the prior crimes and relying on the testimony of the gang expert.

**III. GANG HISTORY BOOKS.** The availability of historical gang information is an important component in the training and development of gang expertise. This information can further assist in the prosecution of members of the gang. Each Gang Impact Team (GIT) shall prepare a Gang History Book for each of the major gangs in their Area. Each Gang History Book should include, but is not limited to:

- \* A list of gang experts for this gang;
- \* History of the gang;
- \* Criminal activity of this gang, including copies of crime reports, arrest reports and certified records of convictions attributed to this gang, news clippings and written articles;
- \* Alliances and enemies of the gang;
- \* A map of the gang's area; and,

- \* Photos of the gang's graffiti.

The Gang History Book shall not contain:

- \* Individual gang records;
- \* CAL/GANG Cards; or,
- \* Gang lists.

The Gang History Books will become a ready reference for current gang experts and for establishing predicated offenses. The Gang History Books shall be continually updated as more officers become experts and more crimes and convictions are attributed to the gang. This will greatly assist in the timely preparation of gang enhancement cases. The Gang History Books are considered part of the gang intelligence files and the same criteria of "right to know" and "need to know" is required.

**Note:** In accordance with Special Order No.3, 2004, *Guidelines for the Cal/Gang System and Gang File - Revised*, only gang officers and gang detectives are authorized to maintain the Gang History Books. The watch commander shall have access to all gang files, including the Gang History Books. The Gang History Books shall not be removed from the Area station without prior approval from the Area Commanding Officer.

**IV. PREDICATE CRIMES AND GANG EXPERTISE IN THE CAL/GANG SYSTEM.** In order to make predicate crimes and gang experts available Countywide, it shall be the responsibility of every GIT officer and detective to also ensure that his/her gang expertise is documented in the CAL/GANG System. Successful prosecutions of gang enhancement cases shall be entered in the CAL/GANG Case Management System, including current and all predicate crimes related to the case. In essence, the CAL/GANG System can serve as an automated resource for easily obtaining gang experts and predicate crime information for specific gangs. Gang Support Section, Special Operations Support Division, will advise and assist in updating CAL/GANG user profiles and Case Management input for predicate crimes.

**V. GANG OFFICER'S RESPONSIBILITY.** Every gang officer should become an expert in each of his/her assigned gang(s) as soon as practical. Once expertise has been established,

it shall be documented in the Gang History Book and in the CAL/GANG System.

Gang Impact Teams shall maintain an updated Gang History Book for all of their major gangs.

**VI. GANG DETECTIVE'S RESPONSIBILITY.** Gang expertise by detectives shall be documented in the Gang History Book and entered into the CAL/GANG System. When a gang detective becomes aware of an arrest of any gang member in his or her Area, gang enhancements shall be considered before filing charges. If necessary, the detective shall be guided by the recommendation of the filing deputy from the City Attorney's or District Attorney's Office. When a case is filed with gang enhancements, the gang detective shall ensure that the information on the predicate crimes is entered into the CAL/GANG System.

**AMENDMENTS:** This Order amends Manual Sections 4/269.10, 4/269.50 and 4/745.25 of the Department Manual.

**AUDIT RESPONSIBILITY:** The Commanding Officer, Special Operations Bureau, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

**WILLIAM J. BRATTON**  
Chief of Police

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